

REMARKS

Double Patenting

Claims 21-32 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 8, 10-27, and 30-39 of United States Patent No. 7,261,221. *Office Action*, page 3. Once allowable subject matter is indicated in the present application, Applicant will execute and file a terminal disclaimer to overcome the obviousness-type double patenting rejections.

Claim Status

Claims 21-25, 27, 28, 30, and 31 were rejected on page 4 of the Office Action under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 3,078,017 (Waskonig) in view of United States Patent No. 5,307,955 (Viegas).

Claim 29 was rejected on page 5 of the Office Action under 35 U.S.C. §103(a) as being unpatentable over Waskonig in view of Viegas and further in view of United States Patent No. 6,308,923 (Howard).

Claim 32 was rejected on page 6 of the Office Action under 35 U.S.C. §103(a) as being unpatentable over Waskonig in view of Viegas and further in view of United States Patent No. 5,749,497 (Davis).

Claims 26 and 33-40 were withdrawn. Claims 21-25 and 27-32 are pending.

Claim 32 is allowable

Applicant respectfully traverses the rejection to claim 32. The cited references do not disclose or suggest the specific combination of claim 32. For example, the combination of Waskonig, Viegas, and Davis do not disclose or suggest a system where in the closed position an interior lid surface of a lid faces towards a container and an exterior lid surface of the lid faces away from the container, where the lid contacts the surface that is exposable to moist conditions but is not attached to the surface that is

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exposable to moist conditions when in an open position, where in the open position the interior lid surface directly faces the surface that is exposable to moist conditions and the exterior lid surface faces directly away from the surface that is exposable to moist conditions, as set forth in claim 32. Support for this claim amendment may be found in at least page 8, lines 19-24; page 11, lines 3-17; and Figs. 4-8 of the application.

The cited portions of Waskonig disclose a suction cup that functions as a lid during transport. *Waskonig*, column 1, lines 26-29. The suction cup is attached to a vertical surface and has a hook onto which the tube is suspended. *Waskonig*, Fig. 2.

The cited portions of Viegas disclose a flip cap attached to a valve assembly that can be closed during transport to prevent accidental leakage. *Viegas*, column 7, lines 1-4. The flip cap is contained within a bottom of the package that has edges configured to allow the package to stand by itself on a store shelf. *Viegas*, column 2, lines 53-61; Fig. 2. The flip cap can be opened in order to permit fluid to be dispensed as shown in Figs. 1, 4A and 4B of Viegas.

The cited portions of Davis disclose a container and retractable hanger system that is flat at both ends so that it can be stood on either end. *Davis*, column 5, lines 1-3. The dispenser can have a flip top opening or other equivalent conventional dispensing opening (not shown) so that the end of the container of the dispenser can be flat. *Davis*, column 5, lines 4-6. The cap could also be removable. *Davis*, column 5, lines 6-7.

In contrast to claim 32, the cited portions of Waskonig, Viegas and Davis fail to disclose or suggest a system where in the closed position an interior lid surface of a lid faces towards a container and an exterior lid surface of the lid faces away from the container, where the lid contacts the surface that is exposable to moist conditions but is not attached to the surface that is exposable to moist conditions when in an open position, where in the open position the interior lid surface directly faces the surface that

is exposable to moist conditions and the exterior lid surface faces directly away from the surface that is exposable to moist conditions, as set forth in claim 32. The suction cup of Waskonig functions as a lid in a closed position, but is attached to the vertical surface when the tube is used to dispense fluid. *Waskonig*, Fig. 2. In a dispensing position, the suction cup functions as a hooking device and not as a lid, and nowhere is a lid present when the product is dispensed.

The cited portions of Viegas disclose a flip cap that can be moved between a closed position and an open position. Figs. 4A and 4B show the flip cap rotating less than 180° from the closed position to the open position. Placement of a surface next to the flip cap so that it contacts the flip cap would cause the exterior flip cap surface to indirectly face the surface, and would cause the interior flip cap surface to indirectly face away from the surface. Further, Viegas appears in Fig. 1 to show the flip cap rotating 180° from the closed to the open position. Placement of a surface next to and contacting the flip cap of Fig. 1 in Viegas would cause neither the interior flip cap surface or exterior flip cap surface to face the surface as they would both be perpendicular to the surface. Additionally, the office action admits, and Applicant agrees, that both Waskonig and Viegas fail to disclose a lid that contacts the surface but is not attached to the surface when in an open position. *Office Action*, page 6. As such, the combination of Waskonig and Viegas fails to disclose the subject matter set forth in claim 32.

Incorporation of Davis fails to correct the deficiencies noted in the primary references of Waskonig and Viegas. Fig. 3 shows the back side of the container of Davis and appears to disclose a notch at the very bottom that a user will put his or her finger into in order to open the cap. *Davis*, Fig. 3. This will cause the flip cap to open away from the back side. As such, incorporation of the flip cap of Davis would render a device in which the flip cap does not contact the surface because it would pivot away from the surface when opened. Even assuming the flip cap of Davis pivots towards the surface, it would still not disclose all of the claim elements of claim 32 as flip top and

other conventional openings only open 180° or less. Viegas in fact discloses a conventional flip top cap that opens 180° or less. Even assuming a conventional flip top cap would open greater than 180°, it would not be capable of pivoting to the extent that it would contact the surface and so that its interior lid surface would directly face the contacted surface. Conventional flip top caps include reinforcing structure at their hinge that function to reinforce the hinge and to limit pivoting range of the flip top cap to prevent wear and subsequent breaking of the hinge. Conventional flip top caps that lack any such reinforcing structure, such as the one in Fig. 4B of Viegas, are arranged so that continued pivoting of the flip top cap would cause it to either snap off of the hinge or contact the sidewall so as to prevent the necessary pivoting range to be reached.

Conventional flip top caps simply do not pivot to the extent that their interior lid surface would directly face the surface that is exposable to moist conditions. As such, it would not have been obvious for one having ordinary skill in the art to modify the combination of references to achieve the structure set forth in claim 32 as provision of a flip top cap that can pivot to the extent required would result in a weakening of the hinge that holds the cap. One having ordinary skill in the art would not modify a design to result in a weaker structure that is more prone to breakage. Therefore, the combination of Waskonig, Viegas and Davis fails to disclose or suggest at least one element of claim 32. Applicant submits that claim 32 defines over the combination of Waskonig, Viegas and Davis and is in condition for allowance.

Claims 21-25 and 27-31 are Allowable

Applicant respectfully traverses the rejections to claims 21-25 and 27-31. The cited references do not disclose or suggest the specific combination of claim 21. For example, the combination of Waskonig and Viegas does not disclose or suggest a system with a lid that prevents fluid from being dispensed when in a closed position, where in the closed position an interior lid surface of the lid faces towards the container and an exterior lid surface of the lid faces away from the container, where the lid

contacts the surface exposable to moist conditions but is not attached to the surface exposable to moist conditions when in an open position, where in the open position the interior lid surface directly faces the surface exposable to moist conditions and the exterior lid surface faces directly away from the surface exposable to moist conditions, as set forth in claim 21. Support for this claim amendment may be found in at least page 8, lines 19-24; page 11, lines 3-17; and Figs. 4-8 of the application. Although not exact, the amendments made to claim 21 are substantially similar to the amendments made to claim 32, and Applicant submits that claim 21 defines over the combination of Waskonig and Viegas for essentially the same reasons as discussed above concerning claim 32. Hence, claim 21 is allowable. Further, all claims that depend from claim 21 (claims 22-25 and 27-31) are also in condition for allowance as their rejections are rendered moot due to the allowance of independent claim 21.

Inasmuch as all outstanding issues raised by the Examiner have been addressed, it is respectfully submitted that the present application is in condition for allowance, and action to such effect is earnestly solicited. The Examiner is encouraged to telephone the undersigned at her convenience should only minor issues remain after consideration of the present Amendment, to permit early resolution of same.

Any changes to the claims in this amendment, which have not been specifically noted to overcome a rejection based upon the cited art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Please charge any additional fees required by this Amendment to Deposit Account No. 50-3172.

Respectfully submitted,

J. BENNETT MULLINAX, LLC

A handwritten signature in black ink, reading "Neal P. Pierotti". The signature is written in a cursive, flowing style with a horizontal line at the end.

Neal P. Pierotti

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